



UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

KAMEHAMEHA SCHOOLS

Employer

and

KAMEHAMEHA SCHOOLS FACULTY
ASSOCIATION

Petitioner

37-RC-4105**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, 1/ I find that:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/

3. The labor organization involved claims to represent the employees of the Employer. 3/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 5/

All full-time and regular part-time pre-school classroom teachers employed by the Employer in the State of Hawaii; excluding all other employees, extended day teachers, teaching assistants, janitors, maintenance employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION 6/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the

(OVER)

payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced fewer than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **KAMEHAMEHA SCHOOLS FACULTY ASSOCIATION**.

LIST OF VOTERS

In order to insure that all eligible voters have an opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, I hereby direct that within seven days of the date of this Decision the Employer shall submit to me three copies of an election eligibility list that shows the full names and addresses of all the eligible voters. I shall make that list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). This list must be received in the Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-245, Post Office Box 50208, Honolulu, Hawaii 96850, on or before July 1, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW 7

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by July 8, 2005.

Dated June 24, 2005

at San Francisco, California

/s/ Timothy Wong Peck

Timothy Wong Peck

Acting Regional Director, Region 20

Kamehameha Schools
Case 37-RC-4105
Decision & Direction of Election

- 1/ I take administrative notice of and include in the record as Board Exhibit 3 a copy of the certification of representative that issued in Case 37-RC-3819 on March 23, 1998, which certified Petitioner as the exclusive collective-bargaining representative of the Employer's employees in the following unit:

All full-time and regular part-time (not less than 50 percent workload) kindergarten through twelfth grade classroom teachers and librarians employed at the Employer's Kapalama campus, Honolulu, Hawaii; but excluding all temporary and seasonal teachers (including summer session classroom teachers), head librarian, academic department chairs, teachers' aides, teachers' assistants, paraprofessional aides, preschool teachers, Hawaiian resource specialists, Athletic Department personnel not otherwise employed as regular part-time or full-time classroom teachers, counselors, all other employees, guards and supervisors as defined in the Act.

- 2/ The parties stipulated, and the record reflects, that the Employer, a charitable education trust with its principal place of business in Honolulu, Hawaii, operates preschools and a high school. The parties also stipulated that during the 12-month period ending April 30, 2005, the Employer derived gross revenues in excess of \$1,000,000 and purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Hawaii. Based on the parties' stipulation to such facts, I find that the Employer is engaged in commerce and that it will effectuate the purposes of the Act to assert jurisdiction in this matter.
- 3/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 4/ The parties stipulated, and I find, that there is no contract bar to this proceeding.
- 5/ By its amended petition, the Petitioner seeks to represent a unit comprised of all preschool classroom teachers employed by the Employer in all of its preschool classrooms in the State of Hawaii. The parties stipulated, and I find, that any unit found appropriate in this case should exclude all other employees, extended day teachers, teaching assistants, janitors, maintenance employees, guards and supervisors as defined in the Act. The petitioned-for unit consists of approximately 77 preschool teachers who work in Employer facilities on the islands of Oahu, Maui, Molokai, Kauai and the Big Island of Hawaii in the State of Hawaii.

The Employer contends that the petition should be dismissed because the preschool teachers are statutory supervisors based on their authority over the teaching assistants assigned to their classrooms. The Petitioner takes the opposite view. For the reasons discussed below, I find that the preschool teachers are not statutory supervisors and decline to dismiss the petition.

As noted above, the Employer is a charitable education trust which has as its primary mission the education of children of Hawaiian descent in preschool through high school programs. The Employer's preschool program includes approximately

Kamehameha Schools
Case 37-RC-4105
Decision & Direction of Election

77 preschool classrooms at 33 locations on five of the Hawaiian Islands, Oahu, Maui, Molokai, Kauai and the Big Island of Hawaii. The preschool program is headed by the Dean of Early Childhood Education, Suzanne Ramos, whose office is located at the Employer's Kapalama campus in Honolulu.

Dean Ramos has overall responsibility for the preschool program and she heads a group of managers who decide the curriculum and structure of the preschool program as well as the testing conducted within the program. Part of her responsibility is also to oversee the regional managers, the teachers, teaching assistants, outreach counselors and aides who work in the preschool program. Ramos testified that she visits classrooms in the preschool program "very rarely." Reporting to Ramos is an associate dean whose office is also located at Kapalama. The record does not contain any evidence regarding the duties of the associate dean.

The Employer has a centralized human resources system and all of its preschool teachers as well as other personnel are subject to the same employee handbook and have the same grievance procedure. All preschool teachers work the same hours, are on the same payroll schedule and receive the same benefits. In the 2005-2006 school year, all preschool classrooms will utilize the same calendar. The Employer has a state-wide curriculum guide and assessment system, called the "work sampling system." Teachers use the curriculum guide, which sets forth concepts and sequences, to plan their weekly lessons. The Employer's program is designed to allow the teachers to tailor their lessons to fit each student's individual needs. The teachers determine a student's learning abilities and the appropriate level of instruction. The work sampling system used by the Employer has subject areas that teachers must cover with their classes, including social and physical development, language and literacy, math concepts, and science. The Employer uses the work sampling system as an assessment tool to determine the success of the implementation of its curriculum. The Employer also has resource specialists who work out of Oahu and who travel to the various classrooms to assist in the implementation of the work sampling system by training new teachers and teaching assistants and by giving classes to parents and children. The resource specialists do not otherwise monitor the implementation of the work sampling system and curriculum guide. The Employer also has an outreach counseling department on Oahu and the counselors from that department travel to Employer's facilities on the other islands to handle family and behavioral issues and to teach classes to teachers and parents. The Employer also uses the same standardized tests to assess the learning levels of children in all of its preschool classrooms. A uniform parent handbook is also used at all locations.

The Employer's preschool program is administratively divided into eight regions, with the following number of preschool teachers assigned to each region: the Island of Hawaii is divided into an East Hawaii region (with 14 teachers) and a West Hawaii region (with 13 teachers); the Island of Maui comprises its own region with ten teachers; the Island of Oahu is divided into three regions, Koolau Loa with eight teachers, Waianae with 14 teachers and Honolulu with ten teachers; the Island of Molokai (called the Koolau Poko region) has five teachers; and the Island of Kauai region has six teachers.

Kamehameha Schools
Case 37-RC-4105
Decision & Direction of Election

Each region is headed by a regional manager whose office is on the Island where his or her region is located. Four of the regions (i.e., East Hawaii, West Hawaii, Maui and Waianae) also have assistant regional managers. The regional managers report to Dean Ramos. Ramos and the regional managers prepare strategic plans and tactical plans, which set forth the goals of the preschool program and how they are to be achieved. The regional managers also have primary administrative responsibility over their regions and all the personnel working within them. This includes the training and evaluation of teachers; dealing with parents and children; meeting licensing requirements; and handling accreditation matters. Regional managers visit the classrooms in their respective regions with varying degrees of frequency ranging from once every other week to several times a week based in part on the proximity of the classrooms to their offices.

Each of the classrooms in the Employer's preschool program has a teacher and a teaching assistant. The record contains an Employer internet website advertisement obtained by Petitioner on May 20, 2005, for a preschool teacher position for a classroom on Molokai. The requirements for the position include a bachelor's degree in early childhood education, elementary education or a related field. Included in the description of duties are the planning and implementation of schedules and routines to maximize learning; the demonstration of clear written and oral communication skills; effective organization and time management skills; and the ability to work cooperatively with colleagues, administrators and staff and to engage in professional behavior and development. There is no reference to responsibility for supervising any other employees in this advertisement. The salary is \$40,506.

The record also contains a May 20, 2005, website job announcement for a teaching assistant position for a classroom in Kane'ohe, which states that this position assists in daily classroom instruction, including appropriate interactions with students; small group instruction; and student observation and assessment. The job announcement states that the person in the position "may substitute for the teacher when the teacher is absent." It further states that the teaching assistant "supervises student behavior independently and under teacher direction using appropriate early childhood behavior management techniques . . ." Educational requirements include an associate degree in early childhood education or a related field and six months to one year work experience or a CDA certification and six months to one year experience or high school/equivalent with four or more years of related work experience. The salary is listed as \$2131 monthly. The record reflects that the term CDA certification refers to an early childhood development certification.

The record also includes the Employer's formal job description for the teaching assistant position, which lists the various tasks to be performed by the teaching assistant in the classroom. These tasks include small group instruction; providing program and clerical support through planning snack menus; making home visits with teachers; maintaining attendance and other records; preparing materials for the classroom; preparing snacks; and sanitizing serving and eating areas. Dean Ramos testified that the tasks listed in the position description are those typically performed by the teaching assistant in the classroom.

Kamehameha Schools
Case 37-RC-4105
Decision & Direction of Election

In addition, the record contains a job description for the position of preschool teacher, effective September 6, 2002, which was identified on the record by Ramos as the Employer's official position description for the position. This document is missing the last page, which apparently is the signature page. In relevant part, the position description states that the preschool teacher "[s]upervises a teaching assistant." However, also contained in the portion of the position description entitled "Title of Position Supervised (does not apply to lead positions-must have supervisory responsibility for performance, pay, discipline, hiring/firing, etc.)" is the entry "N/A." There is no entry under the portion of the position description entitled "Number of Staff Members Supervised Indirectly." Ramos testified that the "N/A" in the position description means "does not apply," and she conceded that the position description indicates that the teachers do not have supervisory authority over performance, pay, discipline or hiring and firing. Ramos testified, however, that she disagreed with the Employer's job description and that teachers do have supervisory responsibilities over the teaching assistant in the areas of discipline and performance.

With regard to the issue of the teachers' authority to discipline teaching assistants, Ramos testified that the teachers can "certainly bring disciplinary problems up. They could deal with an emergency situation immediately when it happens." Ramos gave, as an example, that a teacher could discipline a teaching assistant if the assistant hit someone. She did not describe the type of discipline a teacher could administer nor did she offer any specific evidence that such an incident had ever occurred.

Ramos testified that in non-emergency situations, a teacher could try to reach an informal understanding with the teaching assistant about a problem and that if they were unable to reach an informal agreement, the teacher could bring the problem to the attention of the regional manager. For example, she testified that teachers could warn teaching assistants that if a tardiness problem continued, the teacher would notify the regional manager. According to Ramos, a matter could become part of the formal disciplinary process as soon as the regional manager became involved. She testified that the regional manager's involvement was required in order to document any disciplinary action and that the regional manager must implement all formal discipline. According to Ramos, there have been occasions when teachers have verbally warned teaching assistants as part of the formal disciplinary process. However, the record contains no specific evidence in this regard.

Ramos also testified that teachers can recommend to the regional manager that teaching assistants be suspended or terminated. According to Ramos, in such situations, a teacher's recommendation triggers an investigation by management. When asked whether investigations are conducted by management even in situations involving allegedly egregious misconduct, Ramos testified that the practice in her division was "always investigate." The record contains no evidence of any specific situations in which a teacher had effectively recommended the disciplining of a teaching assistant.

The record contains the testimony of four currently employed preschool teachers who work on the Islands of Maui, Oahu, Kauai and the Big Island and who have been employed by the Employer for seven, ten, eleven or fifteen years. Their

Kamehameha Schools
Case 37-RC-4105
Decision & Direction of Election

testimony was that none of them had ever been involved in disciplining a teaching assistant.

As indicated above, Dean Ramos testified that teachers possess supervisory authority with regard to the performance of the teaching assistants. In this regard, the record shows that new teaching assistants have a three-month probationary period and that the regional manager and the dean have authority to decide if a teaching assistant has passed that probation. However, Ramos testified that the teacher is the only person who has the opportunity to observe the performance of the teaching assistant on a daily basis and that the teacher can recommend to the regional director whether a teaching assistant should be retained, terminated or transferred to another classroom. Ramos testified that she believed that the regional managers deferred to the teachers' recommendations in this regard. She further testified that if a teacher and a regional manager disagreed about whether a teaching assistant should be retained, either one could bring the dispute to her attention. The record, however, contains no specific evidence of any occasion when a teacher made an effective recommendation regarding retention of a new teaching assistant, or of any dispute between a regional manager and a teacher over the retention of a teaching assistant that was brought to Ramos' attention.

The record reflects that the Employer has a teacher evaluation system under which teachers and teaching assistants fill out annual self-evaluations and turn them in to the regional manager who is supposed to approve them and forward them to the dean. However, Dean Ramos testified that during the year preceding the hearing, her office had received such evaluations from only one of the eight regions. The teachers testified that they had given input on the self-evaluations completed by teaching assistants by supplying specific examples from the classroom to support statements made by the teaching assistants regarding what they had done during the year. The teachers also testified that they had sometimes suggested goals for the teaching assistants. However, the teachers testified that they do not write critical evaluations of teaching assistants; they do not prepare the teaching assistant evaluations; and they do not sign such evaluations. The record contains no evaluations and there is no evidence in the record showing that a teaching assistant's promotion has ever been affected by input given by a teacher on an evaluation. Further, Ramos testified generally that promotion decisions are made by the regional manager, the dean's office and the human resources department.

The record reflects that layoff decisions are handled by the regional managers and there is no evidence that teachers are involved in such decision-making.

Hiring is primarily the responsibility of the regional managers but if a replacement for a teaching assistant is being hired, a regional manager may choose to include the teacher in the interview process if the teacher is available. However, Ramos testified that there is no requirement that a teacher interview the teaching assistant and the record contains no evidence of any specific instances where a teacher has been involved in an interview or made a hiring recommendation. The four teacher witnesses testified that they had no involvement in hiring.

Kamehameha Schools
Case 37-RC-4105
Decision & Direction of Election

Teachers and teaching assistants are assigned to classrooms by the regional manager. In this regard, Teacher Karen Gill, who works on the Island of Maui, testified that about five years before the hearing, she had unspecified problems with the teaching assistant assigned to her classroom. According to Gill, although she complained to the regional manager all year about the teaching assistant, the teaching assistant was not removed from her classroom. Gill testified that at the end of the school year, she wrote a letter to the regional manager stating that she would resign if she was assigned to the same classroom as the teaching assistant for the following school year. According to Gill, the regional manager transferred both her and the teaching assistant to a new site and to work in classrooms which were next door to each other.

Teachers do not approve or sign the timesheets of the teaching assistants and all overtime must be approved in advance by the regional manager. Vacation and sick leave are also authorized by the regional manager. The record shows that the regional manager, teachers and teaching assistants sometimes consult with each other to ensure that either the teacher or the teaching assistant is present in the classroom at all times in order to provide continuity. However, it is the regional manager who decides whether leave requests by the teacher and teaching assistant will be granted. When teaching assistants are sick or absent for other reasons, they have the primary responsibility to find their own replacements. Ramos testified that teachers can informally authorize short periods of compensatory time for teaching assistants, allowing them to leave the class 15 minutes early one day and then work an additional 15 minutes the next day in order to make up the time. However, the four teachers testified that they cannot authorize compensatory time and the record contains no specific examples or documentation showing any instances when teachers have done so. In this regard, Teacher Karen Gill testified that her regional manager is "very aware" of this issue and "double checks" to ensure that the teaching assistant in her classroom does not work extra time.

Teachers are in charge in their classrooms and are responsible for implementing the curriculum and preparing the weekly lesson plans which set forth the classroom activities. The teachers submit lesson plans to the regional managers who are responsible for ensuring that the lesson plans are appropriate and carry out the curriculum. Teachers are given a large amount of discretion to tailor their lesson plans to meet the needs of their classrooms. The record contains a sample lesson plan for the week of May 13, 2005, which shows that certain tasks had been assigned to the teacher and others had been assigned to the teaching assistant.

I detailed earlier the Employer's formal job description for the teaching assistant position. As indicated above, Ramos testified that these tasks are the ones typically assigned to the teaching assistant in the classroom. Teachers Gill, Luning-Akau and Koenig all testified that they cannot assign duties to the teaching assistant beyond those specified in the job description unless the teaching assistant voluntarily agrees to perform such tasks. Gill testified that when she was having the problems with the teaching assistant referred to above, the regional manager made it clear that Gill had no authority to assign the teaching assistant any tasks beyond those listed in the job description.

Kamehameha Schools
Case 37-RC-4105
Decision & Direction of Election

The testimony of all four teachers shows that the teachers and the teaching assistants collaborate in preparing the lesson plan and assist each other in running the classroom and that teaching assistants sometimes teach classes and substitute for teachers when they are absent. The record shows that generally the teacher and teaching assistant work cooperatively to perform whatever tasks need to be done in the classroom.

Thus, Teacher Lanice Pullano testified that she works collaboratively as a team with her teaching assistant, asking for the assistant's input in formulating the lesson plan and sharing tasks and helping each other out during the day in handling such matters as bathroom accidents and putting out snacks. Teacher Val Luning-Akau similarly testified that the teaching assistant in her classroom has input on the curriculum and activities in the classroom and will choose to present stories or other material to the children with Luning-Akau's guidance. According to Luning-Akau, her teaching assistant teaches the class two days a week and Luning-Akau teaches three days a week. Teacher Koenig testified that she and the teaching assistant meet together every day after the children have left to put together the lesson plan or to work on the work sampling plan. According to Koenig, the teaching assistant in her classroom was formerly a teacher and Koenig incorporates her ideas into the lesson plan and she substitutes for Koenig when Koenig is absent.

Ramos also testified that teachers have a budget with which to buy other books and materials for their classrooms, but the record does not detail the size of this budget, the manner in which it is administered, or the teachers' authority with regard to it. No party has raised the teacher's responsibility with respect to the classroom budget as a basis for excluding the teachers from the unit.

Analysis.

As indicated above, the Employer contends that the petition should be dismissed because the teachers are the supervisors of the teaching assistants in their classrooms. The Petitioner takes the opposite position.

The term "supervisor" is defined in Section 2(11) of the Act as:

[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In order to support a finding of supervisory status, an employee must possess at least one of the indicia of supervisory authority set out in Section 2(11) of the Act. *International Center for Integrative Studies*, 297 NLRB 601 (1990); *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). Further, the authority must be exercised with independent judgment on behalf of the employer and not in a routine, clerical or perfunctory manner. *Clark Machine Corp.*, 308 NLRB 555 (1992); *Bowne of*

Kamehameha Schools
Case 37-RC-4105
Decision & Direction of Election

Houston, Inc., 280 NLRB 1222, 1223 (1986). In determining whether an individual is a supervisor, the Board has a duty to employees not to construe supervisory status too broadly because the employee who is found to be a supervisor is denied the employee rights that are protected under the Act. *Hydro Conduit Corp.*, 254 NLRB 433, 347 (1981). A determination of supervisory status must be based on actual authority and secondary indicia alone, such as job titles, differences in pay and attendance at meetings, are insufficient to establish that an employee is a statutory supervisor. *Laborers Local 341 v. NLRB*, *supra*; *Arizona Public Service Co. v. NLRB*, 453 F.2d 228, 231 fn. 6 (9th Cir. 1971); *Waterbed World*, 286 NLRB 425, 426 (1987). Only individuals with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen . . . and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985), *enfd.* in relevant part 794 F.2d 527 (9th Cir. 1986). Therefore, an individual who exercises some "supervisory authority" only in a routine, clerical, or perfunctory manner will not be found to be a supervisor. *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). Further, the burden of proving that an individual is a supervisor is on the party alleging such status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 712 (2001); *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *California Beverage Co.*, 283 NLRB 328 (1987); *Tucson Gas & Electric Company*, 241 NLRB 181 (1979).

Upon a careful consideration of all the evidence in the record, I find that the Employer has not carried its burden to establish that the preschool teachers are statutory supervisors. There is no persuasive evidence showing that the teachers possess authority to affect the hiring, disciplining, promotion, layoff or other conditions of employment of the teaching assistants. While the teacher is in charge of the classroom and is responsible for the implementation of the curriculum and the instruction of the preschool children in her care, the record shows that the tasks of the teaching assistant are prescribed by the job description for that position and that teachers only provide routine direction to them in handling the tasks so prescribed. The record shows that the teachers are not authorized to assign other types of work to the teaching assistants unless the teaching assistant agrees to do such work. The relationship is a collaborative one with the teacher and teaching assistant assisting each other in running the classroom and sharing the various tasks that need to be done. Teaching assistants teach the students, substitute for the teacher and give input into the curriculum. There is no concrete evidence that the teacher plays any role in the assignment of the teaching assistants to classrooms, the formulation of their work schedules, the granting of time off or authorization of overtime for them, or whether they are retained or promoted. Rather, such decisions are made by the regional manager. The only specific example of a recommendation by a teacher in the instant record is Gill's letter to a regional manager stating that she would resign if she and the teaching assistant in her classroom were not separated from each other in the following school year. Although the regional manager, after considerable delay, did reassign Gill and the teaching assistant to different classrooms to accommodate the personality or other conflict that had developed, this isolated and extreme example is insufficient to establish that supervisors exercise supervisory authority over assistants. Indeed, the circumstances seem to point more strongly in the other direction. Although teachers may report their observations of the teaching assistants' abilities and/or misconduct to the regional managers, in the absence of any concrete evidence showing that they possess the power to make effective

Kamehameha Schools
Case 37-RC-4105
Decision & Direction of Election

recommendations regarding the retention or discipline of teaching assistants there simply is insufficient evidence to support a finding of supervisory status.

In reaching the conclusion that the preschool teachers are not statutory supervisors, I have carefully considered the Employer's contentions, including its contention that the teachers are statutory supervisors because they assign work to the teaching assistants. The Employer relies on *Arlington Masonry Supply, Inc.*, 339 NLRB No. 99 (2003) to support its argument in this regard. In *Arlington*, the Board found that a full-time mechanic with the title "maintenance supervisor" was a statutory supervisor based on his authority to assign work. In that case, the Board observed that the Employer's general manager visited the maintenance garage where the maintenance supervisor worked only about three times a week for about five minutes a visit. The Board also found that the maintenance supervisor was responsible for all the work going in and out of the maintenance garage and that he prioritized all the work that needed to be done in the garage; independently made the assignments of work to himself and to the one other mechanic; directed the other mechanic as to what work needed to be done; inspected the mechanic's work; scheduled the mechanic; approved his time off; and independently assigned his hours of work, including overtime. The maintenance supervisor also issued written and verbal reprimands on his own authority and could recommend the suspension or discharge of an employee and the general manager would follow the recommendation. Additionally, the maintenance supervisor ordered parts for the garage and approved invoices. I find the Employer's reliance on *Arlington* misplaced. In the instant case, the teachers do not schedule the teaching assistants and do not authorize overtime or approve their time off. Nor is there any substantial evidence that they issue reprimands to teaching assistants. Finally, as discussed above, the teachers in the instant case only provide routine direction to the teaching assistants in performing the tasks which are prescribed in their job descriptions.

Accordingly, I find that the teachers are not statutory supervisors and I decline to dismiss the petition based on their asserted supervisory status.

- 6/ At the hearing, the parties agreed that any election directed herein should be conducted after the teachers return from summer break at the end of July 2005. The ultimate determination as to the timing and manner of the election will be decided administratively after issuance of this decision.
- 7/ In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.